

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Claim 23 has been added. Thus, claims 12-23 are pending in the patent application, of which claims 12, 15, 18, and 19 are independent.

Noted – Priority Document Received by USPTO

The indication (see attachments to the Office Actions mailed March 19, 2004, box 12(a)(1) as checked) that certified copy of the priority document has been received by the USPTO in noted with application.

Noted – IDS considered

The indication (see attachments to the Office Actions mailed, March 19, 2004, December 13, 2005, February 21, 2007, April 16, 2007 and October 22, 2007) that the Information Disclosure Statements (IDS) as filed on February 9, 2000, September 27, 2005, June 7, 2006, October 30, 2006, July 17, 2007 and September 4, 2007 and references listed therein have been considered is noted with application.

Approval of Drawings Requested

Drawings were submitted on February 10, 2000. To date, no official indication of approval of the drawings has been noted in the prosecution history. The undersigned has no reason to believe that this circumstance implies anything other than a minor oversight on the part of the USPTO. Accordingly, official approval of the drawings is hereby respectfully requested.

Claim Rejections Under 35 U.S.C. §112

Claims 15 and 18 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite. By the foregoing amendments, the claims have been amended to more particularly set out and distinctly claim their subject matter. Accordingly, withdrawal of the rejection is respectfully requested.

"[A] communication data size" in Claim 15, line 9 does not refer to the same communication data size cited in line 6-7.

"[T]he other" in "the other communication mode" in Claim 15, line 10 means that "the other communication mode" is different from "a communication mode" in line 9.

Claim Rejection Under 35 U.S.C. §102

Claims 12, 13, 19, 21, 22 are rejected under 35 U.S.C. §102(a) as being anticipated by Achour et al. (US 6,363,260 B1).

Claims 12 and 13 are rejected under 35 U.S.C. §102(a) as being anticipated by Fujimoto et al. (US 6,640,115 B1).

INDEPENDENT CLAIM 12

As an example, independent claim 12 recites (among other things) a feature of:

measuring communication performances of communication between the communication device and the other communication device in each of a plurality of different communication modes, under a plurality of different communication conditions respectively;

determining, as a threshold, a communication condition that the corresponding measured communication performance of one of the communication modes exceeds a measured communication performance of the other communication mode based on a result of the measurement;

Achour in Column 1, Lines 35-40, recites "[t]herefore, when traveling from one cell to another, performance of a wireless communication device tends to degrade while approaching the edge of the first cell and does not return to full performance until the wireless communication device is away from the edge of the second cell."

Achour in Column 1, Lines 44-48, recites "[t]hus, it is apparent that there is a need to increase the performance of wireless communication devices when located near the edge of a cell, and especially at the edge of a coverage area. The present invention provides this and other advantages..."

From these descriptions it seems that Achour is aiming at solving the problem of lowering the performance of communication which might be caused by moving of the communication device. However, in Achour there is no specific disclosure as to how and on what criterion the communication system is decided at the start-up of communication.

Achour in Claim 1 recites "if the first performance level falls below a first threshold level and the second performance level falls below a second threshold," and "if...either the first or second performance levels exceed their respective thresholds..."

Achour in Claim 8 recites "...compare the first performance level with a first threshold level," "...compare the second performance level with a second threshold level," "...both the first performance level is below the first threshold level and...the second performance level is below the second threshold level."

As it is clear from these descriptions, it can be read that a first threshold level compared with the first performance level, and a second threshold level compared with the second performance level, are different threshold values. Further, with Achour, it is determined whether the first performance level is above the first threshold level or not, and whether the second performance level is above the second threshold level or not. Here, the results of the two determinations have no relationship to each other.

Determining from these descriptions, it seems that in Achour, the concept or idea of comparing the performance per each communication mode according to the communication condition applied to communication, is not existing.

Achour does not disclose "*measuring communication performances of communication between the communication device and the other communication device in each of a plurality of different communication modes, under a plurality of different communication conditions respectively.*" Achour also does not disclose "*determining, as a threshold, a communication condition that the corresponding measured communication performance of one of the communication modes exceeds a measured communication performance of the other communication mode based on a result of the measurement.*"

Fujimoto is directed to "a radio telephone apparatus which serves as a mobile station" (Column 2, line 37-).

Regarding the "high speed" of Fujimoto which is indicated by the Examiner as corresponding to the "communication condition", Fujimoto describes in Column 2, line 50, et seq., as follows:

Fujimoto in Column 2, line 53- recites:

...controlling the response operation performing means so as not to perform an operation to respond to a calling station after an incoming call operation is performed, when the judging means

judges that the radio telephone apparatus is moving at high speed during the incoming call operation ...

Fujimoto in Column 2, line 63 to Column 3, line 11, recites:

Based on the connection condition, it is judged whether the apparatus is moving at high speed or not. For example, the number of times the communication possible base station has been switched within a predetermined unit time is counted, the counted number of times and a predetermined number of times are compared, and when the counted number of times exceeds the predetermined number of times, it is judged that the radio telephone apparatus is moving at high speed. Instead of making the judgment on the basis of the number of times of switching of the base station like this, the radio telephone apparatus may be judged as moving at high speed when a clocked time is shorter than a predetermined time...

Fujimoto in Column 2, line 31- recites:

...radio telephone apparatus capable of...notifying...the arrival of a call by controlling an incoming call response operation of the radio telephone apparatus on the basis of the movement speed of the apparatus

From these descriptions, it can be said that the term "high speed" of

Fujimoto refers to the moving speed of the "radio telephone apparatus" which is a mobile body. Further, it can be understood from the description at Column 1, line 53- that communication control is performed according to a moving speed of the mobile body (in the current state).

From these descriptions, Fujimoto merely discloses that the current moving speed of the radio telephone apparatus is determined, and the communication system is switched-over according to the determined moving speed. With the situation as assumed by Fujimoto, the radio telephone apparatuses do not move simultaneously at a plurality of moving speeds.

It should be noted that with Fujimoto the moving speed is not directly determined, but simply observes the communication state at that point.

Fujimoto in Column 16, line 47- recites:

The communication judgment circuit 22 selectively judges the communication mode in accordance with the movement speed of the radio telephone apparatus 1f. Specifically, when the radio telephone apparatus 1f is not moving at high speed, the communication judgment

circuit 22 selects the normal communication mode, and when the apparatus 1f is moving at high speed, the circuit 22 selects the inter-mobile station direct radio communication mode.

However, this description does not indicate the concept that communication is performed in both communication modes of "the normal communication mode" and "the direct radio communication mode", and determines the communication performances, respectively.

Fujimoto does not disclose or suggest the feature of "measuring performances of communication . . . in each of a plurality of different communication modes." The description of Fujimoto at Col. 16, line 47, et seq., could have suggested that either one of the "normal communication mode" or "the direct radio communication mode" is selected based on the determined communication speed, but this does not suggest the above-mentioned recitation in this claim of the present application.

In this claim, the "measuring performances of communication . . ." is performed "under a plurality of different communication conditions." Fujimoto does not suggest or teach the concept or idea that the communication in the "normal communication mode" and the communication in the "direct radio communication mode" are executed under the plurality of moving speeds, and obtains the respective communication performances.

As discussed above, Fujimoto does not disclose the concept or the idea that the communication in the "normal communication mode" and the communication in the "direct radio communication mode" are executed under the plurality of moving speeds, and obtains the respective communication performances, and, therefore, it does not suggest the concept or the idea of determining the communication condition, wherein the communication performance in one of the communication mode is above the communication performance in the other communication mode.

Claim 13 depend from Claim 12. A basis for how Achour is deficient vis-à-vis Claims 12 has been noted above. A basis for how Fujimoto is deficient vis-à-vis Claims 12 has been noted above.

Among other things, a *prima facie* case of obviousness must be established that the asserted combination of references teaches or suggested each and every element of the claimed invention. In view of the distinction of Claim 12 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails

to establish a *prima facie* case of obviousness vis-à-vis Claims 12. Claim 13 ultimately depend from claim 19, and so at least similarly distinguish over the asserted combination of references.

Accordingly, withdrawal of the rejection is respectfully requested.

INDEPENDENT CLAIM 19

As an example, independent claim 19 recites (among other things) a feature of:

measuring a communication performance in the first communication mode, and a communication performance in the second communication mode under each of the different communication conditions;

determining, based on the communication performances measured under each of the different communication conditions, a communication condition in which a communication performance of the first communication mode exceeds a communication performance of the second communication mode;

Achour in Column 1, Lines 35-40, recites “[t]herefore, when traveling from one cell to another, performance of a wireless communication device tends to degrade while approaching the edge of the first cell and does not return to full performance until the wireless communication device is away from the edge of the second cell.”

Achour in Column 1, Lines 44-48, recites “[t]hus, it is apparent that there is a need to increase the performance of wireless communication devices when located near the edge of a cell, and especially at the edge of a coverage area. The present invention provides this and other advantages...”

From these descriptions it seems that Achour is aiming at solving the problem of lowering the performance of communication which might be caused by moving of the communication device. However, in Achour there is no specific disclosure as to how and on what criterion the communication system is decided at the start-up of communication.

Achour in Column 1, Lines 35-40, recites “[t]herefore, when traveling from one cell to another, performance of a wireless communication device tends to degrade while approaching the edge of the first cell and does not return to full performance until the wireless communication device is away from the edge of the second cell.”

Achour in Column 1, Lines 44-48, recites “[t]hus, it is apparent that there is a need to increase the performance of wireless communication devices when located near the edge of a

cell, and especially at the edge of a coverage area. The present invention provides this and other advantages..."

From these descriptions it seems that Achour is aiming at solving the problem of lowering the performance of communication which might be caused by moving of the communication device. However, in Achour there is no specific disclosure as to how and on what criterion the communication system is decided at the start-up of communication.

Achour in Claim 1 recites "if the first performance level falls below a first threshold level and the second performance level falls below a second threshold," and "if...either the first or second performance levels exceed their respective thresholds..."

Achour in Claim 8 recites "...compare the first performance level with a first threshold level," "...compare the second performance level with a second threshold level," "...both the first performance level is below the first threshold level and...the second performance level is below the second threshold level."

As it is clear from these descriptions, it can be read that a first threshold level compared with the first performance level, and a second threshold level compared with the second performance level, are different threshold values. Further, with Achour, it is determined whether the first performance level is above the first threshold level or not, and whether the second performance level is above the second threshold level or not. Here, the results of the two determinations have no relationship to each other.

Determining from these descriptions, it seems that in Achour, the concept or idea of comparing the performance per each communication mode according to the communication condition applied to communication, is not existing.

Claims 21-22 depend from Claim 19. A basis for how Achour is deficient vis-à-vis Claims 19 has been noted above.

Among other things, a *prima facie* case of obviousness must be established that the asserted combination of references teaches or suggested each and every element of the claimed invention. In view of the distinction of Claim 19 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails to establish a *prima facie* case of obviousness vis-à-vis Claims 19. Claims 21-22 ultimately depend from claim 19, and so at least similarly distinguish over the asserted combination of references.

Accordingly, withdrawal of the rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. §103

Claims 14, 15, 18 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Achour in view of Vembu (US 6,259,928 B1).

Claims 16 and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Achour in view of Vembu and Liu (US 6,252,900 B1).

Claims 14 and 20 depend from Claims 12 and 19, respectively. A basis for how Achour is deficient vis-à-vis Claims 12 and 19 has been noted above. The Office Action does not rely upon Vembu to compensate for these deficiencies. Hence, the noted feature of Claims 14 and 20 also is a distinction over Vembu.

Among other things, a *prima facie* case of obviousness must be established that the asserted combination of references teaches or suggested each and every element of the claimed invention. In view of the distinction of Claims 12 and 19 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails to establish a *prima facie* case of obviousness vis-à-vis Claims 12 and 19. Claims 14 and 20 ultimately depend from claims 12 and 19, respectively, and so at least similarly distinguish over the asserted combination of references.

In view of the foregoing discussion, the rejection of Claims 14 and 19 is improper. Accordingly, withdrawal of the rejection is respectfully requested.

INDEPENDENT CLAIM 15

As an example, independent claim 15 recites (among other things) a feature of:

a unit that measures performances of a communication between the other communication device in a plurality of different communication modes, under a plurality of different communication data sizes respectively, for each of the other communication devices;

a unit that determines, for each of the other communication device, a communication data size that a communication performance of a communication between the other communication device in a first communication mode exceeds a communication performance of communication in a second communication mode;

...

As will be explained below, at least these features of claim 15 are a distinction over Achour, and thus over its combination with Vembu.

Examiner states Achour does not disclose the claim limitations as the communication condition is a size of data.

Vembu in column 10, lines 1-6 recites "...the metric used to determine system performance is an error determination made based on the number of errors in the received signal or number of frames received with errors..."

Vembu teach that determining not the number of frames, but the number of frames received with errors. The number of frames received with errors is different from a size of data. Vembu does not teach or suggest "the communication condition is a size of data."

Further, the letters "SNR" described in Vembu stand for "Signal-to-Noise Radio" (see, Column 5, line 19), and from this point, it can be understood that Vembu is taking note of the noise/error.

In this Claim 15, an amount/size of the data itself (or the whole data) which is the object of the communication is one of the conditions for selecting "the communication mode." However, such concept or idea of determining the amount of data itself of the object of communication is not suggest at all in the description of Vembu as indicated by the Examiner.

Large or small of the error amount and large or small of the data mount have no correlation to one another. Namely, the "number of errors" in Vembu and "the communication data size" of this Claim 15 are not synonymous.

Hence, the noted features of claim 15 are distinction over Vembu. The noted features also are distinction over Achour as evidenced, e.g., by the Office Action. That is, the Office Action does not assert Achour as disclosing the noted features.

Claims 16-17 depend from Claim 15. A basis for how Achour is deficient vis-à-vis Claims 15 has been noted above. The Office Action does not rely upon Vembu to compensate for these deficiencies. Hence, the noted feature of Claims 15 also is a distinction over Vembu.

Among other things, a *prima facie* case of obviousness must be established that the asserted combination of references teaches or suggested each and every element of the claimed invention. In view of the distinction of Claim 15 noted above, at least one claimed element is not present in the asserted combination of references. Hence, the Office Action fails

to establish a *prima facie* case of obviousness vis-à-vis Claims 15. Claims 16-17 ultimately depend from claim 15, and so at least similarly distinguish over the asserted combination of references.

Accordingly, withdrawal of the rejection is respectfully requested.

INDEPENDENT CLAIM 18

As an example, independent claim 18 recites (among other things) a feature of:

...
measuring performances of communication between the other communication device in a plurality of different communication modes under a plurality of different communication conditions respectively, for each of the other communication devices;

determining, for each of the other communication device, a communication condition that a communication performance of communication between the other communicating device in one of the communication modes exceeds a communication performance of communication in the other communication mode, for each other of the other communication devices;

...

As will be explained below, at least these features of claim 18 are a distinction over Achour, and thus over its combination with Vembu.

Achour in Column 1, Lines 35-40, recites “[t]herefore, when traveling from one cell to another, performance of a wireless communication device tends to degrade while approaching the edge of the first cell and does not return to full performance until the wireless communication device is away from the edge of the second cell.”

Achour in Column 1, Lines 44-48, recites “[t]hus, it is apparent that there is a need to increase the performance of wireless communication devices when located near the edge of a cell, and especially at the edge of a coverage area. The present invention provides this and other advantages...”

From these descriptions it seems that Achour is aiming at solving the problem of lowering the performance of communication which might be caused by moving of the communication device. However, in Achour there is no specific disclosure as to how and on what criterion the communication system is decided at the start-up of communication.

Achour in Column 1, Lines 35-40, recites “[t]herefore, when traveling from one cell to another, performance of a wireless communication device tends to degrade while approaching the edge of the first cell and does not return to full performance until the wireless communication device is away from the edge of the second cell.”

Achour in Column 1, Lines 44-48, recites “[t]hus, it is apparent that there is a need to increase the performance of wireless communication devices when located near the edge of a cell, and especially at the edge of a coverage area. The present invention provides this and other advantages...”

From these descriptions it seems that Achour is aiming at solving the problem of lowering the performance of communication which might be caused by moving of the communication device. However, in Achour there is no specific disclosure as to how and on what criterion the communication system is decided at the start-up of communication.

Achour in Claim 1 recites “if the first performance level falls below a first threshold level and the second performance level falls below a second threshold,” and “if...either the first or second performance levels exceed their respective thresholds...”

Achour in Claim 8 recites “...compare the first performance level with a first threshold level,” “...compare the second performance level with a second threshold level,” “...both the first performance level is below the first threshold level and...the second performance level is below the second threshold level.”

As it is clear from these descriptions, it can be read that a first threshold level compared with the first performance level, and a second threshold level compared with the second performance level, are different threshold values. Further, with Achour, it is determined whether the first performance level is above the first threshold level or not, and whether the second performance level is above the second threshold level or not. Here, the results of the two determinations have no relationship to each other.

Determining from these descriptions, it seems that in Achour, the concept or idea of comparing the performance per each communication mode according to the communication condition applied to communication, is not existing.

Hence, the noted features of claim 18 are distinction over Achour. The noted features also are distinction over Vembu as evidenced, e.g., by the Office Action. That is, the Office Action does not assert Vembu as disclosing the noted features.

Accordingly, withdrawal of the rejection is respectfully requested.

New Claim

New dependent claim 23 has been added. Distinguishing features of claim 12 has been noted above. As for new claim 23 not argued above, the following comments are provided. New claim 23 ultimately depends from claim 12, and so at least similarly distinguish over the asserted combination of references.

Conclusion

In light of the foregoing, withdrawal of the rejection of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 19-3935.

Respectfully submitted,
STAAS & HALSEY LLP

/Mehdi D. Sheikerz/

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